

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>LOIS BARNETT</b>	)	
Claimant	)	
VS.	)	
	)	
<b>NEWMAN MEMORIAL HOSPITAL</b>	)	
Respondent	)	
AND	)	
	)	
<b>PHICO INSURANCE COMPANY</b>	)	
Insurance Carrier	)	

Docket No. 196,484

**ORDER**

Respondent and its insurance carrier appeal from a Preliminary Hearing Order dated May 25, 1995, wherein Administrative Law Judge Floyd V. Palmer granted claimant's request for preliminary benefits including temporary total disability compensation and medical treatment.

**ISSUES**

The issues respondent and insurance carrier seek to be reviewed by the Appeals Board include:

- (1) Whether the Administrative Law Judge erred in finding that the claimant suffered an accidental injury which arose out of and in the course and scope of her employment at Newman Memorial Hospital;
- (2) Whether the Administrative Law Judge erred in finding that the claimant's accidents and alleged resulting injuries constitute a compensable workers compensation claim;

- (3) Whether the Administrative Law Judge erred in finding the claimant is temporarily and totally disabled; and
- (4) Whether the Administrative Law Judge erred in finding that the claimant is in need of medical treatment as a result of the work-related injury.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

The Appeals Board has jurisdiction to consider the issues raised by respondent numbered one (1) and two (2) above, but is without jurisdiction to consider issues numbered three (3) and four (4) on appeal from a preliminary hearing order. See K.S.A. 44-534a and K.S.A. 44-551, as amended by S.B. 59 (1995).

Respondent takes issue with the finding by the Administrative Law Judge that claimant was exposed to fumes in her work place that resulted in injury. Respondent presents the affidavits of co-workers, who contend that they were exposed to the same chemicals as claimant and were unaffected thereby. Respondent further introduced a report of Greg Jungclaus of the Midwest Research Institute, a Ph.D. in chemistry and the senior advisor for environmental chemistry with MRI. He ran tests consisting of the taking of air samples before and after the use of oven cleaner, exposure to which claimant testified caused her onset of symptoms on November 21, 1994. In his affidavit, Mr. Jungclaus finds that the organic compounds identified are not dangerous to humans at any level and that the levels of sodium hydroxide are substantially less than the level considered acceptable by the ACGIH.

Claimant was initially treated at Newman Memorial Hospital on November 21, 1994. She was released to return to work. However, two (2) days later she suffered a relapse and was taken to the Emergency Room of Coffey County Hospital. She was eventually referred to Harold William Barkman, Jr., M.D., an internal medicine physician specializing in public health, occupational and environmental medicine, pulmonary diseases and critical care medicine at the Kansas University Medical Center.

The question as to whether an accident occurred and the related question of whether claimant's complaints are related to her exposure to fumes of the work place seem to be answered by Dr. Barkman. His medical report and subsequent deposition clearly indicate that there was an injury to claimant. The medical records from the emergency room establish that claimant was suffering from an acute respiratory disorder resulting in significant oxygen deficiency. He relates the onset of claimant's symptoms on the date in question, to her exposure at work to the oven cleaner in conjunction with the organic material within the oven.

The medical records and reports in evidence establish injury by accident on the date alleged arising out of and in the course of employment. To the extent there may be other non-work related factors contributing to claimant's obstructive airway disease does not relieve respondent from responsibility for the claimant's acute onset at work and the resulting aggravation of her condition.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the May 25, 1995 Preliminary Hearing Order of Administrative Law Judge Floyd V. Palmer should be, and is hereby, affirmed in all respects.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of November, 1995.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Michael J. Unrein, Topeka, Kansas  
Steven J. Quinn, Kansas City, Missouri  
Floyd V. Palmer, Administrative Law Judge  
Philip S. Harness, Director

After reviewing the entire record, for purposes of preliminary hearing, the Appeals Board finds as follows:

For the reasons expressed below, this Application for Review should be dismissed.

(1) The issue of whether a claimant is temporarily and totally disabled is not reviewable by the Appeals Board on an appeal from a preliminary hearing order.

The finding by the Administrative Law Judge contained in his Order of August 11, 1995 that temporary total disability compensation should commence November 21, 1994, is not subject to review at this juncture of the proceeding. It neither pertains to one of the jurisdictional issues contained in K.S.A. 44-534a(a)(2), nor did the Administrative Law Judge exceed his authority by deciding the issue, which could permit review pursuant to K.S.A. 44-551, as amended by S.B. 59 (1995).

Respondent argues that the Administrative Law Judge erred in finding the claimant temporarily and totally disabled from November 21, 1994, because the evidence in the record is insufficient to substantiate a finding that claimant sustained injury from her exposure to a chemical at work. In so doing, respondent attempts to incorporate arguments which were resolved in claimant's favor at an earlier preliminary hearing and which are the subject of a separate appeal. This appeal is limited to the issues presented to the Administrative Law Judge at the August 10, 1995 Preliminary Hearing and which are the subject of the August 11, 1995 Order.

The Preliminary Hearing of August 10, 1995 was held to consider claimant's motion to clarify the Court's prior Order dated May 25, 1995. Specifically, the claimant requested the Court to issue an order requiring temporary total disability compensation beginning November 21, 1994, the claimant's date of accident. A Preliminary Hearing had been held on April 20, 1995 which resulted in an Order for Compensation which included temporary total disability compensation and medical treatment. In the Order from that hearing dated May 25, 1995, the Administrative Law Judge found that claimant had carried her burden of proof ". . . that she has been exposed to an undetermined variety of fumes in her employment at respondent over several years which has resulted in an accidental injury within the meaning of the Act." Following that Order, respondent commenced paying temporary total disability benefits beginning with the date of the Court's Order. Claimant contended that temporary total disability compensation was payable from the date claimant left work on November 21, 1994. That was the subject of the hearing held August 10, 1995 and was the sole issue decided by the Administrative Law Judge's Order of August 11, 1995. It is, therefore, also the sole issue presented for review by the Appeals Board.

K.S.A. 44-555b(a), as amended by S.B. 59 (1995), grants review by the Board ". . . upon questions of law and fact as presented and shown by a transcript of the evidence and the proceedings as presented, had and introduced before the administrative law judge." The Preliminary Hearing held August 10, 1995, before Administrative Law Judge Floyd V. Palmer, addressed claimant's request for clarification of the Court's May 25, 1995 Order concerning the date of commencement for the ordered temporary total disability compensation benefits. The underlying issue of the compensability of the claim was not before the Administrative Law Judge at the August 10, 1995 hearing and it is not, therefore, before the Appeals Board on appeal from the Administrative Law Judge's August 11, 1995 Ruling On Claimant's Motion Regarding Temporary Total Disability. Respondent

cannot "incorporate all issues raised in the prior petition," which sought review of the May 25, 1995 Order. Those issues will be dealt with separately by the Appeals Board in a separate order.

Accordingly, the Appeals Board finds that respondent's appeal does not raise an issue which is subject to review at this stage of the proceedings. The finding by the Administrative Law Judge as to date of commencement for temporary total disability benefits is not a final order and does not give rise to an issue which is considered jurisdictional pursuant to K.S.A. 44-534a. As such, the respondent's appeal of this issue should be dismissed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the appeal of respondent should be, and is hereby, dismissed and the Order of Administrative Law Judge Floyd V. Palmer dated August 11, 1995, remains in full force and effect.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of November, 1995.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Michael J. Unrein, Topeka, Kansas  
Steven J. Quinn, Kansas City, Missouri  
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